

REPORT No. 145/10

PETITION 942-05

ADMISSIBILITY

MARIO TOMAS BARAHONA ZELAYA AND HERIBERTO ANTONIO CHICA PORTILLO

HONDURAS

November 1, 2010

I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a complaint on August 17, 2005, filed by Mario Tomas Barahona Zelaya and Heriberto Antonio Chica Portillo (hereinafter "the petitioners" and/or "the alleged victims") against the Republic of Honduras (hereinafter the "State," "Honduras," or "Honduran State"). The petition claims that Honduras is internationally responsible for having prevented the alleged victims, because they were Evangelical pastors, from participating as congressional candidates in the general election that took place in November 2005.

2. The petitioners maintain that the State is responsible for the violation, with prejudice to them, of the rights protected by article 12 (freedom of conscience and religion) and article 23 (right to participate in government) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention"). Regarding the admissibility of the complaint, they affirm that it was not possible to appeal the judicial decision that violated their rights, and that the facts were not the object of a complaint before any other international organization.

3. The Honduran State, in turn, contends that the petition is inadmissible, as it is manifestly groundless and out of order. In this respect, it maintains that the alleged victims do not meet the requirements established by Honduran law to run for a seat in the National Congress and that the regulations limiting the exercise of political rights in Honduras were established in accordance with the provisions of article 23 of the American Convention and in the exercise of the power States have to establish minimum standards to regulate political participation.

4. The Commission, after examining the petition, and without prejudging the merits of the case, decides that the petition is admissible in the light of articles 46 and 47 of the American Convention and of articles 30, 36, and related articles, of its Rules of Procedure, for the alleged violation of articles 12 and 23 of the American Convention, in connection with articles 1.1 and 2 of same, with prejudice to the alleged victims. Finally, the Commission decides to notify the parties of its decision, publish this admissibility report, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE IACHR

5. The petition was submitted to the Inter-American Commission on August 17, 2005, and registered under the number P-942-05. On August 2, 2006, the petition was transmitted to the State, granting it two months to submit any observations it should consider appropriate. The response of Honduras was received on October 2, 2006.

6. The IACHR also received information from the petitioners on December 1, 2006, November 21, 2007, June 24, 2008, and June 14, 2010. These communications were transmitted to the State.

7. The State, for its part, submitted communications on the following dates: September 28, 2007, April 10 and September 18, 2008, and July 8, 2010. These communications were duly transmitted to the petitioners.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. The petition alleges that Mario Tomás Barahona Zelaya and Heriberto Antonio Chica were deprived of their right to be congressional candidates in the general election held in Honduras in November, 2005, because they were Evangelical pastors.

9. Specifically, Messrs. Barahona and Chica state that they are pastors of the religious congregation “*Ministerio Internacional Mi Viña*” [My Vineyard International Ministry]. They affirm that on February 20, 2005, in the primary elections held by the National Party of Honduras, they were selected as “candidates for deputies to the National Congress” by the Departments of Francisco Morazán and Cortés, respectively. They contend that they had therefore acquired the right to participate in the general election that was to be held in November of 2005 and that the religious congregation to which they belonged had authorized them to carry out political activities.

10. Subsequently, they contend, members of other political parties, the Liberal Party of Honduras and the Special Prosecutor for the Defense of the Constitution (hereinafter “Special Prosecutor”) opposed their participation in the election as congressional candidates. Because of this, a Honduran citizen filed a motion before the Supreme Electoral Tribunal (hereinafter “TSE” as in its Spanish acronym) opposing their participation as candidates. The brief’s main argument was that they were Evangelical pastors. They report that on June 8, 2005 the TSE denied the motion and found that the alleged victims met legal requirements and could stand for election. They further add that two *amparo* petitions (for the protection of constitutional rights) were filed before the Supreme Court of Justice of Honduras against the aforementioned ruling: one was filed by the same Honduran citizen (Case file No. S-CO-873-2005) and the other by the Special Prosecutor (No. S-CO-893-2005). They state that on July 27, 2005, the Supreme Court *ipso jure* found for the first *amparo* petition. They claim that there is no available domestic appeal to challenge the Supreme Court’s decision.

11. They note that although the National Constitution of the Republic of Honduras (hereinafter “Constitution” or “Honduran Constitution”) establishes as a requirement to be a deputy in the National Congress that the person must be a layman or laywoman,¹ it was the same State that conferred upon them the right to stand for election when it authorized them to participate in primary elections, in which they were, in fact, elected. They furthermore maintain that they did not break the norm established by article 77 of the Honduran Constitution, as they did not invoke religious motives to participate politically.

12. They claim that, as a consequence of the aforementioned facts, their right to participate in government was infringed (article 23 of the American Convention) as well as their right to freedom of conscience and religion (article 12 of the American Convention.) They maintain, regarding the first one, that the text of article 23 does not establish “religious motives” as a reason to justify the limitation or regulation of a person’s exercise of his or her right to participate in government. Regarding the second right, they contend that the requirement that they resign from religious occupations in order to be able to participate in politics would restrict their freedom to maintain, profess, and disseminate their religion and their beliefs.

B. Position of the State

13. For its part, the Honduran State maintains that the petition is manifestly groundless and out of order and, therefore, inadmissible. It affirms that the alleged victims do not meet the requirements established by Honduran law to run for the office of deputy to the National Congress and that the legal limitations in this regard were established by the State in accordance with the provisions of article 23 of the American Convention.

14. Specifically, Honduras maintains that each State has the power to establish minimum standards to regulate political participation as long as they are reasonable under the principles of representative democracy, as the Inter-American Court of Human Rights (hereinafter “Court” or “Inter-

¹ Article 198, paragraph 4 of the Honduran Constitution.

American Court”) has held in its case law. Moreover, according to the State, article 23 of the American Convention authorizes States to regulate the right to participate in government, since it is not an absolute right.

15. In this line of reasoning, the State goes on to say, with the purpose of ensuring that the rule of law prevailing in Honduras should be based on laws and not on religious matters, the exercise of political rights was regulated seeking that public officials should be laymen and laywomen. Specifically, national constitutional and legal norms reflect this position, i.e., i) the second paragraph of article 77 of the Honduran Constitution, provides that “ministers of the various religions may not hold public office nor engage in any kind of political propaganda invoking religious motives or using, as a means to that end, the religious beliefs of the people”²; ii) one of the requirements to be elected as a deputy, established by article 198, paragraph 4 of the Honduran Constitution, is “to be a layman or laywoman,”³ and, iii) article 72 of the Electoral Law, prohibits political parties from being dependent on or subordinated to organizations whose members include ministers for worship of any religion or sect.

16. The State maintains that the alleged victims, Evangelical pastors, are not laymen. Therefore it considers that they do not meet the legal requirements to enjoy their right to participate in government. In addition, it emphasizes that, because of their religious occupation, they are also affected by the first prohibition established in article 77 of the Honduran Constitution.

17. It claims that the constraint on the exercise of political rights for the alleged victims in particular, and for all persons who are not laymen or laywomen in general, i) lies within the minimum standards regulating political participation, ii) is reasonable according to the principles of representative democracy, and iii) is compatible with the American Convention, as its article 23 includes among the reasons allowing for the regulation of the exercise of political rights, those pertaining to situations related to the education of the citizen.

18. Furthermore, it claims that there has been no violation of the rights provided for by article 12 of the Convention. In this regard, it affirms that the alleged victims are in full enjoyment of their right to freedom of conscience and religion, and denies that any restrictive measures were adopted infringing this freedom. It adds that the fact that the alleged victims are prohibited from standing for election to the office of deputy because they are not laymen does not mean that the State seeks that the alleged victims abandon their religious orientation.

19. The State also maintains that the purpose of primary elections is for political parties to freely choose their candidates. Consequently, their results constitute a mandate for the political party, but not for the people; under this line of reasoning, any citizen who believes that constitutional norms are being violated has standing to challenge those results.

20. Regarding judicial actions related to the facts object of the complaint, the State: i) submitted information concordant with that provided by the petitioners with respect to the decision adopted by the TSE on June 8, 2005, and adds that against this decision two appeals for reversal were filed, which were denied on July 6, 2005; ii) agrees with the petitioners regarding the fact that two *amparo* petitions were filed against the June 8, 2005 judgment of the TSE. It adds that on August 1, 2005 the Supreme Court declared *amparo* petition S-CO-893-2005, filed by the Special Prosecutor of the Office of the Attorney General for the Defense of the Constitution, inadmissible. It also reported that on October 18, 2005, the Supreme Court of Justice declared inadmissible the *amparo* petition filed by the alleged

² In this regard, the State clarifies that the aforementioned norm contains two prohibitions: i) an absolute prohibition affecting all ministers of a religion or other form of worship – including Evangelical pastors – which prevents them from seeking and holding public office, be it an elected one or not, and ii) the prohibition barring these ministers from making political propaganda invoking religious motives or from using, to that end, the religious beliefs of their people, whether they are candidates for elected office or not.

³ It contends that, according to legal scholarly opinion, “to be a layman” means to not have received holy orders or to belong to any religious order. It goes on to say that in the opinion of jurist Guillermo Cabanellas, a “layman” is a civilian, belonging to the life of the century or the world, a lay person, without religious orders (*Diccionario Enciclopédico de Derecho Usual*, Vol. VI, p. 142).

victims against the judgment of the TSE, which excluded them from the registered lists of candidates for the elected office of deputies to the National Congress for the general elections of November 27, 2005 (case file No. S-CO-1327-2005).

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence of the Inter-American Commission *ratione personae, ratione loci, ratione temporis and ratione materiae*

21. Article 44 of the American Convention authorizes the petitioners to lodge complaints before the IACHR. The petition names, as the alleged victims, natural persons, whose rights, provided for by the American Convention, the State undertook to respect and guarantee. Regarding the State, the Commission notes that Honduras has been a State-Party to the American Convention since September 8, 1977, the day on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to examine the petition, because it alleges the violation of rights protected by the American Convention within the territory of Honduras, a State-Party to said treaty.

22. The Commission is competent *ratione temporis* because the obligation to respect and guarantee rights protected by the American Convention was in force for the State on the date in which the facts alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, because the petition reports the possible violation of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

23. Article 46.1.a of the American Convention provides that, for a complaint lodged before the Inter-American Commission to be admissible as provided for by article 44 of the Convention, it is required that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to take cognizance of an alleged violation of a protected right and, if appropriate, to remedy the violation before the complaint is heard in an international body.

24. In the instant case, the petitioners claim that the July 27, 2005 judgment of the Supreme Court regarding *amparo* petition S-CO-873-2005 restricted their right to stand for election in the general elections of November 2005. They maintain that they did not have any judicial remedy available to modify this decision. The State, in turn, did not submit any observations related to the exhaustion of domestic remedies.

25. From the information in the IACHR's case file, it can be inferred that:

- On June 8, 2005, in its judgment number 42-2005/2006, the Supreme Electoral Tribunal of the Republic of Honduras decided the cases related to "Challenge to the Standing of Evangelical Pastors Mario Tomás Barahona (...) and Heriberto Antonio Chica Portillo Regarding Their Participation in the General Elections of November 27, 2005." On that occasion, the tribunal decided to approve the participation of the pastors in the elections.

- On July 8, 2005, an administrative *amparo* petition was filed before the Supreme Court of Justice against the TSE's decision of June 8, 2005 (registered under the number 873-2005). The motion was admitted on July 18, 2005.

- On July 27, 2005, the Constitutional Chamber of the Supreme Court of Justice decided in favor of the petition *ipso jure*. The reasons given by the Chamber for its ruling were that "the appellant considers that the appealed judgment violated the constitutional rights provided for by articles 77 and 198, paragraph 4, of the Constitution" and that the Supreme Electoral Tribunal – as the authority whose decision was being appealed – did not forward in timely fashion the report it had requested regarding one of the lawsuits filed which had given rise to the June 8, 2005 decision.

The operative part of the judgment stated, as the legal grounds for the decision, *inter alia*, articles 77⁴ and 198⁵ of the Honduran Constitution.

- On October 17, 2005, Messrs. Barahona Zelaya and Chica Portillo filed *amparo* petition against the TSE decision excluding them from the official roster of candidates to the office of deputy in the National Congress for the November 27 elections (case file No. S-CO-137-2005). They claimed that since they were elected in primary elections, their exclusion infringed their constitutional rights “to be elected” and to enjoy “equality under the law,” and article 23 of the American Convention, as well.
- On October 18, 2005 the Constitutional Chamber of the Supreme Court declared the *amparo* petition inadmissible, arguing that it had already decided regarding the challenged decision, which in turn referred to the same matter and the same persons, and because the effects of the challenged judgment had ceased.

26. Considering the aforementioned background, the Commission concludes that the national organs for the administration of justice had taken cognizance of the situation which was the object of the complaint filed by the alleged victims before the IACHR, and that they had the opportunity to analyze it and decide regarding it when they examined the *amparo* petition against the TSE's ruling excluding the petitioners from the official list of electoral candidates.

27. Therefore, the Commission concludes that, in the October 18, 2005 judgment handed down by the Constitutional Chamber of the Supreme Court of Justice of Honduras regarding the *amparo* proceeding 137-2005, domestic remedies were exhausted. Consequently, it considers that the requirement established by article 46.1.a of the American Convention has been met.

C. Timeliness of the petition

28. Pursuant to article 46.1.b of the Convention, for a petition to be admitted, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment handed down at the domestic level. In the instant case, the IACHR notes that the petition was submitted on August 17, 2005, before all domestic remedies had been exhausted. However, the Commission has held that in those situations where evolution of the facts initially presented at the domestic level implies a change in the compliance or noncompliance with admissibility requirements, admissibility requirements of a petition must be examined at the moment at which the Commission pronounces on its admissibility.⁶ Therefore, it is the opinion of the IACHR that the requirement established by article 46.1.b of the American Convention has been met.

D. Duplication of proceedings and international *res judicata*

29. In order to declare a petition admissible, article 46.1.c of the American Convention requires that the subject of the petition or communication is not pending in another international proceeding for settlement, and article 47.d requires that the petition or communication not be substantially the same as one previously studied by the Commission or by another international organization. In the case at hand, the petitioners affirm that the facts which are the subject of the petition have not been filed

⁴ Constitution of the Republic of Honduras: Article 77. The free practice of all religions and forms of worship, without preference for any of them, is guaranteed, insofar as they do not contravene the law and public order.

Ministers of the various religious may not hold public office nor engage in any kind of political propaganda invoking religious motives or using, as a means to that end, the religious beliefs of the people.

⁵ Constitution of the Republic of Honduras: Article 198. The requirements to be elected as a deputy are: 1. To be a Honduran by birth; 2. To have reached the age of twenty-one; 3) To be in the enjoyment of his or her citizen rights; 4. To be a layman or laywoman, and 5. To have been born in the department he or she seeks to represent or to have resided in it for at least the last five years prior to the date on which elections were convened.

⁶ IACHR, Report No. 2/08, Petition 506/05, Inadmissibility, José Rodríguez Dañín, Bolivia, March 6, 2008, paragraph 57.

in a complaint before any other international organization, and there is no evidence to the contrary in the case file. Therefore, it is the opinion of the IACHR that the requirements established by articles 46.1.c and 47.d of the Convention have been met.

E. Colorable claim

30. To consider a petition admissible, the Commission must decide if the facts alleged, should they be proven, could establish a violation of rights, as provided for by article 47.b of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order”, as provided for by paragraph (c) of the same article.” The criterion for the evaluation of these requirements is different from the one applied to decide on the merits of a petition; the Commission must carry out a *prima facie* evaluation to determine if the petition establishes the grounds of a possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination belongs to an initial analysis which does not entail prejudgment on the merits of the case.

31. In the instant case, the petitioners contend that article 23 of the American Convention does not establish that “religious motives” can be alleged as a reason to regulate the exercise of political rights. The State, in turn, considers that the limitations imposed by domestic law regarding the right to participate in government are consistent with the American Convention.

32. It is the opinion of the Commission that the petition is not “manifestly groundless” nor “obviously out of order” and, therefore, will examine at the merits stage, if there is a possible violation of the rights protected by articles 12 and 23 of the American Convention, in connection with articles 1.1 and 2 of same, with prejudice to the alleged victims. Therefore, the Commission considers that the requirements established by article 47.b and c of the American Convention have been met.

V. CONCLUSIONS

33. The Commission concludes that it is competent to examine the complaint filed by the petitioners and that the petition is admissible pursuant to articles 46 and 47 of the American Convention, regarding the alleged violation of articles 12 and 23 of the American Convention in connection with articles 1.1 and 2 of same, with prejudice to the alleged victims.

34. Based on the foregoing arguments in fact and in law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition admissible with respect to articles 12 and 23 of the American Convention, in connection with articles 1.1 and 2 of same, with prejudice to the alleged victims.
2. To notify the Honduran State and the petitioners of this decision.
3. To continue with its examination of the merits of the case.
4. To publish this report and include it in the Commission’s Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 1st. day of the month of November 2010.
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.